

Message Text

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64

ORIGIN AGR-08

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APPROVED BY NEA/ARN:DAKORN

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USDA/FAS:HKOELLER (DRAFT)

USDA/FAS:DNOVOTNY (DRAFT)

USDA/FAS:TIERNEY (DRAFT)

AID:FFP:AMERCKER (SUBSTANCE)

AID:NESA:ME:BRICHARDSON

NEA/ARN:PKBULLEN

NEA/ARN:RWMURPHY

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O R 072202Z APR 75

FM SECSTATE WASHDC

TO AMEMBASSY DAMASCUS IMMEDIATE

INFO AMEMBASSY BEIRUT

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E.O. 11652: N/A

TAGS: EAID, SY

SUBJECT: TITLE I, PL-480 WHEAT AND RICE TENDERS

REF: (A) DAMASCUS 1148; (B) BEIRUT 03872 (C) BEIRUT 04035

1. SUMMARY: USDA HAS REVIEWED COPIES OF WHEAT AND RICE TENDERS. BOTH TENDERS CONTAIN CLAUSES WHICH WOULD PRECLUDE COMMODITY CREDIT CORPORATION (CCC) FINANCING OF ANYPURCHASES UNDER THE TENDERS UNLESS SUCH CLAUSES DELETED AND/OR SUBSTANTIALLY MODIFIED. BOTH TENDERS, ESPECIALLY WHEAT TENDER, CONTAIN VARIOUS OTHER CLAUSES WHICH IF NOT MODIFIED OR DELETED WOULD: (A) CAUSE MANY POTENTIAL BIDDERS NOT TO
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OFFER; (B) RESTRICT COMPETITION; (C) PUT UNNECESSARY ADDED

EXPENSE ON SELLERS; (D) CAUSE BID PRICES TO BE UNREASONABLY HIGH AND RUN RISK OF NOT PASSING USDA PRICE REVIEW. FOLLOWING PARAS 2-6 ARE USDA COMMENTS. PLEASE HOLD OFF PRESENTING THEM TO SARG PENDING FURTHER COMMUNICATION FROM DEPARTMENT.

2. USDA COMMENTS ON WHEAT TENDER FOLLOW:

A. PL-480 FINANCING REGS ALLOW NO MORE THAN PLUS OR MINUS 5 (FIVE) PERCENT TOLERANCE ON CONTRACT QUANTITIES. TENDER CALLS FOR 10 (TEN) PERCENT. CLAUSE SHOULD BE CHANGED TO READ 5 PERCENT.

B. PURCHASE AUTHORIZATION (PA) 53-502 DOES NOT PROVIDE FOR BAGGED WHEAT. TENDER REQUIRES UP TO 10 PERCENT IN BAGS FOR STOWAGE PURPOSES. COST OF BAGGED WHEAT FOR STORAGE CONSIDERED LOADING AND TRIMMING EXPENSE OF VESSEL WHICH, UNDER PL-480 REGS, CANNOT BE FINANCED AS PART OF COMMODITY PRICE. CLAUSE SHOULD BE DELETED.

C. VALIDITY PERIODS FOR BOTH BID BOND AND PERFORMANCE BOND EXCESSIVE AND WOULD UNNECESSARILY ADD TO SELLERS' EXPENSE AND, CONSEQUENTLY, HIS BID PRICE. PERFORMANCE BOND CLAUSE VALIDITY PERIOD ESPECIALLY EXCESSIVE SINCE CONTRACTS ARE FOB DELIVERY AND SELLERS OBLIGATIONS COMPLETE UPON PRESENTATION BILL OF LADING AND OTHER DOCUMENTATION INDICATING QUALITY, GRADE AND WEIGHT REQUIREMENTS MET. CLAUSES SHOULD BE MODIFIED SO THAT BID BONDS RELEASED PROMPTLY (WITHIN 10 DAYS AFTER AWARDS FOR BID BONDS OF UNSUCCESSFUL BIDDERS, AND WITHIN 30 DAYS OF DELIVERY TO THE VESSEL (IN CASE OF PERFORMANCE BOND)).

D. CLAUSES CONCERNING "TENDERER'S RESIDENCE IN SYRIA", "FOREIGN COMPANIES' AGENTS" AND "DUES AND TAXES" ARE CONFUSING. CLAUSES APPEAR TO PRECLUDE SUPPLIERS WITHOUT AGENTS IN SYRIA FROM BIDDING, THUS LIMITING COMPETITION. SUCH CLAUSES SHOULD BE DELETED. CARGO DUES AND TAXES ARE VESSEL EXPENSES AND NOT FINANCED BY CCC AS PART OF COMMODITY PRICE OR SEPARATELY. CLAUSES REQUIRING COMMODITY SUPPLIERS TO ABSORB SUCH DUES AND TAXES MUST BE DELETED. SELLING AGENT'S COMMISSIONS (AS DEFINED IN 17.2(C)(19) OF LIMITED OFFICIAL USE

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PL-480 FINANCING REGS) WILL BE FINANCED BY CCC IF INCLUDED IN COMMODITY CONTRACT PRICE.

E. RE "REGULATIONS SET FOR BOYCOTTING ISRAEL", PL-480 FINANCING REGS REQUIRE THAT INVITATIONS "SHALL NOT LIMIT THE RIGHT TO SUBMIT OFFERS TO ANY SPECIFIED GROUP OR CLASS OF SUPPLIERS, BUT SHALL PERMIT SUBMISSION OF OFFERS BY ANY SUPPLIER WHO MEETS THE REQUIREMENTS OF" THE PL-480 REGS.

TRADE SOURCES INDICATE EITHER RELUCTANCE OR ABSOLUTE REFUSAL TO BID ON TENDERS WITH THIS TYPE OF CLAUSE. CLAUSE SHOULD BE DELETED.

F. SPECIFICATIONS - BUYER SHOULD BE MADE AWARE THAT PROTEIN CONTENT DETERMINED IN U.S. ON "AS IS BASIS" RATHER THAN "DRY MATTER BASIS". ALSO, WEIGHTS ARE NET OF DOCKAGE AND, THEREFORE, DOCKAGE NOT INVOICED. DOCKAGE LESS THAN .5PERCENT NOT SHOWN ON CERTIFICATES AND ABOVE THAT ONLY IN HALF PERCENT INCREMENTS (I.E., .5 OR 1.0 OR 1.5, ETC. - .9 SHOWN AS ONEHALF).

G. FEES FOR "AUTHENTICATION" OR "LEGALIZATION" OF DOCUMENTS WILL NOT BE FINANCED BY CCC AS PART OF COMMODITY COST. SUCH REQUIREMENTS ADD TO SUPPLIERS' COSTS AND CONSEQUENTLY HIS BID PRICE. NO ALLOWANCE FOR SUCH COSTS TAKEN INTO ACCOUNT DURING USDA PRICE REVIEW.

H. CERTIFICATE OF ORIGIN NOT NECESSARY AS ONLY U.S. GRAIN ELIGIBLE FOR FINANCING UNDER PL-480 AND INSPECTION AND GRADING CERTIFICATES WILL SO INDICATE.

I. LATE SHIPMENT PENALTIES - THIS PROVISION APPEARS TO BE ONE INTENDED TO COVER C AND F OR CIF SHIPMENTS. SELLER CANNOT BE HELD RESPONSIBLE IF VESSEL NOMINATED BY BUYER FAILS TO PRESENT DURING SELLER'S CONTRACT DELIVERY PERIOD. CLAUSE SHOULD BE MODIFIED TO RELIEVE COMMODITY SUPPLIER OF ANY LIABILITY FOR VESSEL DELAY OR FAILURE TO PERFORM. ALSO, BUYER SHOULD BE AWARE THAT CUSTOM OF TRADE IS FOR BUYER TO GIVE SELLER AT LEAST 10 DAYS ADVANCE NOTICE OF VESSEL'S READINESS TO LOAD, WITHIN THE CONTRACT DELIVERY PERIOD. IF VESSEL FAILS TO PRESENT DURING CONTRACT DELIVERY PERIOD, BUYER IS LIABLE FOR ANY CARRYING CHARGES (BUYER HOLDING LIMITED OFFICIAL USE

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CARRIER LIABLE IF CARRIER AT FAULT).

J. INSPECTION - ANY CERTIFICATION OR ANALYSIS IN ADDITION TO THAT REQUIRED BY PA 53-502 AND TITLE I, PL-480 REGS SHOULD BE FOR BUYER'S ACCOUNT.

K. OFFERS - FEW, IF ANY, GRAIN SUPPLIERS WOULD KEEP OFFERS FIRM FOR 10 DAYS AS REQUIRED BY TENDER. THIS REQUIREMENT COULD RESULT IN NO OFFERS OR QUALIFIED OFFERS AND SHOULD BE CHANGED SO THAT BIDS TO BE VALID NO MORE THAN 24 TO 36 HOURS AFTER SUBMISSION DEADLINE. ALSO, DATES FOR RECEIPT AND CONFIRMATION SHOULD NOT BE ON A WEEKEND OR HOLIDAY WHEN BUSINESS NOT BEING TRANSACTED IN U.S.

L. PROVISION SHOULD BE MADE FOR PUBLIC OPENING OF BIDS.

3. USDA COMMENTS ON RICE TENDER:

A. INSPECTION SHOULD BE IN ACCORDANCE WITH REQUIREMENTS OF PA 53-501 AND TITLE I, PL-480 FINANCING REGS. ANY ADDITIONAL INSPECTION REQUIRED BY BUYER SHOULD BE AT BUYERS EXPENSE.

B. LEGALIZATION FEES AND CERTIFICATE OF ORIGIN - SOME COMMENTS APPLY TO RICE TENDER AS WHEATTENDER(SEE PARAS 2G AND H ABOVE).

C. BOYCOTT CLAUSE - COMMENTS SAME AS PARA 2E ABOVE.

D. BID AND PERFORMANCE BONDS - COMMENTS SAME AS PARA 2C ABOVE.

E. PENALTY - COMMENTS SAME AS PARA 2I ABOVE.

F. OFFER AND AWARD DATES - SAME COMMENTS APPLY AS IN PARA 2K ABOVE.

G. PUBLIC TENDER OPENING AS IN PARA 2L ABOVE.

4. BOTH WHEAT AND RICE TENDERS NEED TO BE REVISED ASAP TO REFLECT NECESSARY CHANGES INDICATED ABOVE AND TEXTS OF LIMITED OFFICIAL USE

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REVISED TENDERS CABLED FOR USDA REVIEW AND APPROVAL BEFORE ANY CONTRACTS WILL BE APPROVED UNDER THE PURCHASE AUTHORIZATIONS. TIME LOST IN REVIEWING TENDERS TO USDA SATISFACTION CAN BE ABSORBED BY MOVING BID RECEIPT DATE CLOSER TO AWARD DATE.

5. APPROPRIATE SYRIAN AUTHORITIES SHOULD ALSO BE ADVISED THAT USDA AWAITING COPIES OF FREIGHT TENDERS WHICH MUST BE REVIEWED AND APPROVED IN ACCORDANCE WITH PA REQUIREMENTS. PRESUME SYRIANS AWARE OF CARGO PREFERENCE (PL-664) REQUIREMENTS ON TITLE I PL-480 SHIPMENTS AND THAT PRIOR APPROVAL OF SHIPPING CONTRACTS BY USDA IS REQUIRED.

6. WHEN TENDERS ARE DISCUSSED, EMBASSY SHOULD CONVEY TO SARG AUTHORITIES THAT ALL USDA EFFORTS RE IMPLEMENTATION OF SALES AGREEMENT HAVE BEEN DIRECTED TOWARD ASSURING THAT SYRIA OBTAINS MAXIMUM BENEFIT FROM AGREEMENT AND THAT ALL COMMOD

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